

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOSE VELEZ,

**PROPOSED VERDICT
SHEET**

Plaintiff,

- against -

NYPD POLICE OFFICER MICHAEL O'BRIEN, Shield No. 22886 of the 9th Precinct, NYPD POLICE OFFICER PAUL JURGENS, Shield No. 23820, and JOHN DOE POLICE OFFICERS 1-5,

No. 15 Civ. 7441 (VEC)

Defendants.

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We, the jury in the above-captioned action, unanimously find the following on the questions submitted to us:

1. Did Plaintiff Jose Velez prove by a preponderance of the evidence that he was subjected to excessive force on September 22, 2012 by any of the Defendant(s) listed below?¹

Defendant Michael O'Brien: YES _____ NO _____

Defendant Paul Jurgens: YES _____ NO _____

PROCEED TO QUESTION 2

2. Did Plaintiff Jose Velez prove by a preponderance of the evidence that any of the Defendant(s) listed below failed to intervene to prevent the use of excessive force from being used upon Plaintiff Jose Velez on September 22, 2012?²³

Defendant Michael O'Brien: YES _____ NO _____

¹ Defendants contend that the excessive force claim cannot co-exist with plaintiff's failure to intervene claim. Thus, if the jury answers "no" to question 1, they are done with their deliberations.

² Defendants object, and argue that this claim should not be tried.

³ Plaintiff disputes Defendants' contention that Plaintiff's excessive force and failure to intervene claims against the Defendants cannot co-exist, and briefs the question in the Parties' proposed jury instructions submitted to the Court.

Defendant Paul Jurgens: YES _____ NO _____

IF YOU ANSWERED “NO” TO BOTH PARTS OF QUESTION 1, AND “NO” TO BOTH PARTS OF QUESTION 2, YOU HAVE COMPLETED THE VERDICT SHEET. PLEASE SIGN AND DATE THE VERDICT SHEET ON PAGE 3. IF YOU HAVE ANSWERED “YES” TO ANY PART OF QUESTION 1 OR TO ANY PART OF QUESTION 2, PROCEED TO QUESTION 3.

3. Did Plaintiff Jose Velez prove by a preponderance of the evidence that he is entitled to compensatory damages as a result of any Defendants’ use of excessive force upon him, or failure to intervene to prevent the use of excessive force upon him?⁴

YES _____ NO _____

IF YOU ANSWERED “YES” TO QUESTION 3, GO TO QUESTION 4. IF YOU ANSWERED “NO” TO QUESTION 3, GO TO QUESTION 5.

4. If you answered “yes” to Question 3, state the total dollar amount of compensatory damages that Plaintiff Jose Velez should recover.

\$_____

PLEASE GO TO QUESTION 6. DO NOT ANSWER QUESTION 5.

5. If you answered “no” to Question 3, state the amount of nominal damages, not to exceed one dollar, that you award Plaintiff Jose Velez.

\$_____

PLEASE GO TO QUESTION 6.

⁴ Plaintiff objects to the Verdict Sheet insofar as he argues that Question 3 and Question 4 should be combined with different phrasing, and that Question 5 should be deleted altogether because instructions and verdict sheet treatment of nominal damages are improper as a matter of law in this case. The Parties brief their respective positions on the nominal damages subject in their Proposed Jury Instructions, which they have also submitted today to the Court. As for Plaintiff’s proposed combination of Question 3 and Question 4, Plaintiff requests the following:

“Having found that a Defendant or both Defendants are liable to Plaintiff on one or more of his claims, state the total dollar amount of compensatory damages that Plaintiff Jose Velez proof demonstrated by a preponderance of the evidence that he should receive.”

Then, the Plaintiff requests that the Verdict Sheet instruct the jury to proceed to questions relating to punitive damages.

6. Did Plaintiff Jose Velez prove by a preponderance of the evidence that he is entitled to punitive damages on his claim for the use of excessive force upon him, or on his claim for failure to intervene to prevent the use of excessive force upon him?⁵

YES _____ NO_____

IF YOU ANSWERED “YES” TO QUESTION 6, PROCEED TO QUESTION 7. IF YOU ANSWERED “NO” QUESTION 6, YOU HAVE COMPLETED THE VERDICT SHEET. PLEASE SIGN AND DATE THE VERDICT SHEET ON PAGE 3.

7. If you answered “yes” to Question 6, state the dollar amount of punitive damages that you award Plaintiff Jose Velez.

YES _____ NO_____

Your foreperson must now sign and date the verdict sheet.

Signature of Foreperson/Date

Please put the verdict sheet in a sealed envelope and give it to the Court Security Officer to deliver to the Judge.

⁵ Defendants object, as they do not believe that the option to award punitive damages should be available to the jury.